

Message Text

CONFIDENTIAL

PAGE 01 MANAGU 04143 01 OF 02 181943Z

64

ACTION ARA-20

INFO OCT-01 ISO-00 CIAE-00 DODE-00 PM-07 H-03 INR-10 L-03

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USIA-15 ACDA-19 IO-14 AID-20 OMB-01 DRC-01 /153 W

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P 181800Z OCT 73

FM AMEMBASSY MANAGUA

TO SECSTATE WASHDC PRIORITY 2690

INFO AMEMBASSY GUATEMALA

AMEMBASSY TEGUCIGALPA

AMEMBASSY SAN JOSE

AMEMBASSY SAN SALVADOR

USCINCSO

C O N F I D E N T I A L SECTION 1 OF 2 MANAGUA 4143

USCINCSO FOR POLAD

E. O. 11652: GDS

TAGS: PINT, PINS, NU

SUBJECT: NEW LAW ON "INJURY AND CALUMNY"

REF: STATE 200795, MANAGUA 4052

1. DURING THE PAST FEW MONTHS THE EMBASSY HAS REPORTED MANY OF THE EVENTS WHICH PRECEDED AND POSSIBLY PRECIPITATED INTRODUCTION OF THE NEW LAW ON INJURY AND CALUMNY. HOWEVER, WE CAN APPRECIATE THAT THESE SCATTERED, SEPARATE REPORTS MAY NOT HAVE ENABLED THE DEPARTMENT TO FOCUS DIRECTLY ON THE ISSUE. WE TRUST THAT THE DESCRIPTION AND ANALYSIS OF RELEVANT EVENTS WHICH FOLLOWS WILL CONTRIBUTE TO A BETTER UNDERSTANDING OF THE SITUATION.

2. IN OUR VIEW, THE ROOT CAUSE OF THE NEW LAW IS THE INTENSE AND WIDESPREAD CRITICISM OF THE GON AND ITS HIGH OFFICIALS WHICH HAS EMERGED FOLLOWING THE EARTHQUAKE. WHILE THE GON IS NO STRANGER TO CRITICISM AND OVER THE YEARS HAD LEARNED TO LIVE WITH IT, THE POST

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PAGE 02 MANAGU 04143 01 OF 02 181943Z

EARTHQUAKE VARIETY HAS THE FOLLOWING FEATURES WHICH HAVE MADE IT

PARTICULARLY DIFFICULT TO BEAR:

A. AT A TIME WHEN THE DECISIONS AND ACTIVITIES OF THE GOVERNMENT DIRECTLY AFFECT THE LIVES AND INTERESTS OF THE PEOPLE TO AN UNPRECEDENTED EXTENT, CRITICS HAVE FOCUSED HEAVILY ON IMPORTANT ASPECTS OF THE RECONSTRUCTION AND RECOVERY EFFORT OF VITAL CONCERN TO MOST NICARAGUANS. AMONG THESE ATTACKS ARE ALLEGATIONS RE GOVERNMENT PURCHASE OF LAND (THE CORNELIO HUECK SALE TO THE HOUSING BANK), OF EQUIPMENT (THE MERCEDES BENZ TRUCK DEAL) AND OF A BUILDING COMPLEX (THE ORPHANS HOME CONTROVERSY) AND THE MEDICAL CARE CRISIS. THE GON CONSIDERED SOME OF THESE CHARGES TO BE FALSE, MALICIOUS AND IRRESPONSIBLE, BUT WHETHER TRUE OR FALSE, RESPONSIBLE OR IRRESPONSIBLE, THEY HAD AN IMPACT ON PUBLIC OPINION.

B. CRITICISM HAS COME FROM INFLUENTIAL QUARTERS WHICH HAD NOT IN THE PAST DIRECTLY ATTACKED THE GON, SUCH AS ELEMENTS OF PRIVATE SECTOR, THE CHURCH AND PROFESSIONAL GROUPS RATHER THAN FROM THE TRADITIONAL SOURCES, OPPOSITION LA PRENSA AND POLITICAL PARTIES.

C. CRITICISM HAS BEEN MORE EXTENSIVELY PROPAGATED AND MORE AVIDLY ABSORBED BY A NEWS HUNGRY POPULACE. INTERNALLY, OPPOSITION LA PRENSA HAS GREATLY EXPANDED ITS CIRCULATION AND INCREASINGLY HAS BEEN JOINED IN CRITICIZING THE GON BY RADIO STATIONS, WHICH REACH THE MASS OF ILLITERATES, AS WELL AS THE LESS POLITICAL EL CENTRO-AMERICANO AND EVEN A FEW TELEVISION PROGRAMS. INTERNATIONALLY, THE WIRE SERVICES AND VISITING JOURNALISTS PAY MUCH GREATER ATTENTION TO NICARAGUA AND THEY HAVE FILED A NUMBER OF NEGATIVE NEWS STORIES.

D. THE GON IS SENSITIVE TO THE POSSIBILITY THAT THESE ATTACKS CAN JEOPARDIZE THE INTERNATIONAL ASSISTANCE WHICH IT URGENTLY NEEDS FOR RECONSTRUCTION.

3. WITH PRESIDENTIAL ELECTIONS LESS THAN ONE YEAR AWAY, THESE CRITICISMS OF THE GON HAVE HAD A TELLING EFFECT, PROVOKING A STRONG REACTION AND A MAJOR EFFORT TO DEAL WITH THE SITUATION. OVER THE PAST SEVERAL MONTHS, THE GON HAD ATTEMPTED TO COUNTER THE CRITICISMS THROUGH STATEMENTS AND PRESS CONFERENCES BY GENERAL SOMOZA, HINTS BY ASSEMBLY PRESIDENT HUECK AND MINISTER

CONFIDENTIAL

PAGE 03 MANAGU 04143 01 OF 02 181943Z

OF GOVERNMENT MARIN OF TOUGH NEW LAWS, USE OF THE RADIO AND TELEVISION CODE AND ARTICLES IN NOVEDADES AND BROADCASTS ON THE GOVERNMENT'S PRIME-TIME NATIONAL RADIO NETWORK LAUDING THE ACHIEVEMENTS OF THE GOVERNMENT AND ATTACKING ITS CRITICS.

4. FOR A VARIETY OF REASONS, THE ABOVE MEASURES DID NOT CONTAIN THE FLOW OF CRITICISM OR ALLEVIATE ITS IMPACT ON PUBLIC OPINION. SEEING ITSELF INCREASINGLY HARASSED, THREATENED AND POTENTIALLY

DAMAGED BY CRITICISM WHICH IT PERCEIVED TO BE MALICIOUS AND DOWNRIGHT UNPATRIOTIC, THE GON CHOSE TO ARM ITSELF WITH THE NEW LAW ON INJURY AND CALUMNY. IT DID THIS BECAUSE EXISTING PRESS LAWS DID NOT PROVIDE POLITICALLY ACCEPTABLE MEANS FOR DEALING WITH THE PROBLEM. THE OUT-OF-DATE LAWS ON INJURY AND CALUMNY INVOLVED PRISON SENTENCES WHILE THE 1967 NAVAS LAW ALLOWED THE GOVERNMENT TO CLOSE THE MEDIA IF IT INCITED VIOLENCE OR REVOLUTION. THE SEVERITY OF THESE LAWS MADE THEM UNUSABLE IN THE MODERN ATMOSPHERE OF PUBLIC OPINION.

5. WHILE THIS NEW LEGISLATION COMES AT A BAD TIME AND RUNS THE RISK OF PROVOKING AN ADVERSE DOMESTIC AND INTERNATIONAL REACTION, IT IS NOT WITHOUT SOME MERIT. THERE IS GENERAL AGREEMENT THAT THE ENTIRE 1891 PENAL CODE NEEDS REVISION AS WELL AS A FAIRLY BROAD PUBLIC CONSENSUS THAT SOMETHING SHOULD BE DONE TO BETTER PROTECT INDIVIDUALS AND INSTITUTIONS FROM LIBEL; ALTHOUGH, WITH A MULTITUDE OF GRAVE PROBLEMS FACING THE NATION, THERE HAS BEEN NO PUBLIC CLAMOR FOR SUCH REFORMS AT THIS TIME. NEVERTHELESS, THESE FEELINGS HAVE PROVIDED THE GON A CONVENIENT BASIS FOR ITS ACTION TO AMEND THE LAWS. MOREOVER, IT CAN POINT TO PROVISIONS OF LAWS OF MANY OTHER COUNTRIES DEALING WITH INJURY, CALUMNY AND LIBEL WHICH APPEAR TO BE SIMILAR TO THE NEW NICARAGUAN LAW, IN THIS REGARD, THE GON HAS ALREADY ATTEMPTED FAVORABLE COMPARISONS WITH SOME PROVISIONS OF COLUMBIAN AND U.S. LAWS.

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PAGE 01 MANAGU 04143 02 OF 02 181950Z

64

ACTION ARA-20

INFO OCT-01 ISO-00 CIAE-00 DODE-00 PM-07 H-03 INR-10 L-03

NSAE-00 NSC-10 PA-04 RSC-01 PRS-01 SPC-03 SS-20

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P 181800Z OCT 73

FM AMEMBASSY MANAGUA

TO SECSTATE WASHDC PRIORITY 2691

INFO AMEMBASSY GUATEMALA

AMEMBASSY TECUCIGALPA

AMEMBASSY SAN JOSE

AMEMBASSY SAN SALVADOR

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C O N F I D E N T I A L SECTION 2 OF 2 MANAGUA 4143

USCINCSO FOR POLAD

6. AS REPORTED MANAGUA 4052, GENERAL SOMOZA HAS TOLD THE AMBASSADOR THAT HE APPROVED ENACTMENT OF THIS LAW PRIMARILY TO COUNTER EFFORTS OF HIS ARCH OPPONENT PEDRO JOAQUIN CHAMORRO TO VIOLENTLY OVERTHROW THE GOVERNMENT AND EVEN ASSASSINATE HIM (SOMOZA). WHILE SOMOZA'S CONCERN ON THESE TWO POINTS MAY BE CONTRIBUTING FACTORS, WE BELIEVE THAT ENACTMENT OF THE LAW WAS MOTIVATED AS WELL BY THE EVENTS DESCRIBED IN THE FOREGOING.

7. ALTHOUGH MANY IMPROVEMENTS WERE MADE IN THE PROPOSED LAW PRIOR TO ITS ENACTMENT, IT STILL CONTAINS PROVISIONS, SUCH AS ARTICLE 383, WHICH THE GON, IF IT SO DESIRES, CAN USE TO SUPPRESS WHAT IT JUDGES TO BE FALSE CRITICISM. THE HEAVY HANDED MANNER IN WHICH THE LAW WAS ENACTED (MANAGUA 4012) HEIGHTENS CONCERN THAT IT MAY BE MISUSED, AND CERTAINLY OPPOSITION ELEMENTS AND MOST MEDIA REPRESENTATIVES EXPECT THE WORSE. HOWEVER, THE REAL TEST OF THE LAW'S SIGNIFICANCE OBVIOUSLY WILL BE IN HOW IT IS IMPLEMENTED. BY JUST BEING ON THE BOOKS, THE LAW UNDOUBTEDLY WILL HAVE SOME CONSTRAINING EFFECT ON THE MEDIA. IF SOMOZA DOES NOT USE IT TO ATTEMPT TO SILENCE HIS CRITICS, THAT EFFECT COULD BE SALUTARY, CONFIDENTIAL

CONFIDENTIAL

PAGE 02 MANAGU 04143 02 OF 02 181950Z

REDUCING
IRRESPONSIBLE ATTACKS AND FORCING THE MEDIA TO BACK UP THEIR
CRITICISM OF INDIVIDUALS AND THE GON WITH MORE PROOF.

8. WITH REFERENCE TO POSSIBLE ACTION TO BE TAKEN BY THE USG, BEFORE RECEIPT OF STATE 200795 THE AMBASSADOR HAD POINTED OUT TO GENERAL SOMOZA AND TO MINISTER OF GOVERNMENT MARIN IN CLEAR LANGUAGE THAT ANY USE OF THE LAW TO SUPPRESS FREEDOM OF INFORMATION WOULD CAUSE AN ADVERSE REACTION IN U.S. PUBLIC AND CONGRESSIONAL OPINION AND MIGHT HAVE SERIOUS EFFECTS ON U.S. ASSISTANCE PROGRAMS TO NICARAGUA. THE AMBASSADOR WILL CONTINUE TO KEEP THESE DANGERS CLEARLY BEFORE THE GENERAL AND OTHER GON AUTHORITIES. IN VIEW OF THIS AND THE CONCERN ALREADY EXPRESSED BY DEPUTY ASSISTANT SECRETARY BOWDLER TO AMBASSADOR SEVILLA SACASA, IT IS RECOMMENDED THAT NO FURTHER ACTION BE TAKEN AT THIS TIME. SHOULD THERE BE INDICATIONS THAT THE GON PLANS TO ABUSE THE LAW, THE EMBASSY WILL IMMEDIATELY RECOMMEND FURTHER AND STRONGER WARNINGS.
SHELTON

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